

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FELIX P. BABAUTA	§	
	§	
VS.	§	CIVIL ACTION NO. H-08-251
	§	
HARRIS COUNTY SHERIFF'S	§	
DEPARTMENT, ET AL.	§	

MEMORANDUM AND ORDER


On November 10, 2010, Plaintiff, Felix P. Babauta, filed a Motion to Disqualify the undersigned from this case in which Babauta's "Amended Motion for Relief from Judgment" is now pending. Babauta's Motion is addressed to Chief Judge Ricardo Hinojosa, but under 28 U.S.C. § 455, the challenged judge himself properly rules on such a Motion. United States v. Balistrieri, 779 F.2d 1191, 1202-03 (7<sup>th</sup> Cir. 1985; see also Chitimacha Tribe of Louisiana v. Harry L. Laws. Co., 690 F.2d 1157, 1166 (5<sup>th</sup> Cir. 1982) (A recusal motion under § 455 is committed to the sound discretion of the district judge.)

The Court first notes that Babauta's Motion is untimely. A Motion to Disqualify cannot be used as a fall-back position following adverse rulings in pending cases, United States v. Vader, 160 F.3d 263, 264 (5<sup>th</sup> Cir. 1998), it must be brought "at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." Travelers Insurance Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1405, 1410 (5<sup>th</sup> Cir. 1994) Moreover, judicial rulings in the course of this proceeding will

not support recusal or disqualification under § 455. United States v. Landerman, 109 F.3d 1053, 1066 (5<sup>th</sup> Cir. 1997) (citing Liteky v. United States, 510 U.S. 540, 555 (1994) (("J)udicial rulings alone almost never constitute a valid basis for a bias or partiality motion...they are proper grounds for appeal, not recusal."))

It is, therefore, the ORDER of this Court that Babauta's "Motion to Disqualify or Remove U.S. District Judge Ewing Werlein Jr. From the Case" (Document No. 112) is DENIED.

SIGNED in Houston, Texas, on this 23<sup>d</sup> day of November, 2010.

  
EWING WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE